

ORIGINAL

OPEN MEETING ITEM

11/17/16



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**COMMISSIONERS**  
DOUG LITTLE – Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

JODI JERICH  
EXECUTIVE DIRECTOR



SECURITIES DIVISION  
1300 West Washington, Third Floor  
Phoenix, AZ 85007  
TELEPHONE: (602) 542-4242  
FAX: (602) 388-1335  
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

MEMORANDUM

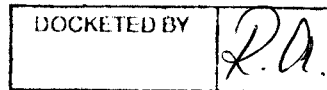
**TO:** Doug Little, Chairman  
Bob Stump  
Bob Burns  
Tom Forese  
Andy Tobin

Arizona Corporation Commission

DOCKETED

NOV 03 2016

**FROM:** Matthew J. Neubert *WJN*  
Director of Securities



RECEIVED  
AZ CORP COMMISSION  
DOCKET CONTROL  
2016 NOV - 3 P 12:12

**DATE:** November 2, 2016

**RE:** Franklin AAA Holdings, LLC, Docket No. S-20930A-15-0211

**CC:** Jodi Jerich, Executive Director

Attached for your consideration is a proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order") against Anthony Clavien.

The Order finds that, beginning in approximately November 2009, Franklin AAA Holdings offered sold securities in the form of notes and investment contracts to several persons. Clavien was involved in the sales to at least three persons. At least two of these persons did not receive full returns of their investments. This activity violates the registration requirements found in A.R.S. §§ 44-1841 and -1842.

The Order requires Clavien to permanently cease and desist from violating the Securities Act, to pay restitution of \$59,926.83 and to pay a \$2,500 administrative penalty. Clavien's payment obligations are joint and several with the other respondent in this matter, Franklin AAA Holdings. The Securities Division recommends the Order as appropriate, in the public interest, and necessary for the protection of investors.

Originator: Ryan J. Millecam

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman  
4 BOB STUMP  
5 BOB BURNS  
6 TOM FORESE  
ANDY TOBIN

In the matter of	)	DOCKET NO. S-20930A-15-0211
Franklin AAA Holdings, LLC, a Texas	)	DECISION NO. _____
limited liability company, and	)	<b>ORDER TO CEASE AND DESIST, ORDER</b>
Anthony Clavien, a single man,	)	<b>FOR RESTITUTION, ORDER FOR</b>
Respondents.	)	<b>ADMINISTRATIVE PENALTIES, AND</b>
	)	<b>CONSENT TO SAME</b>
	)	<b>BY: RESPONDENT ANTHONY CLAVIEN</b>

12 Respondent Anthony Clavien ("Respondent") elects to permanently waive any right to a  
13 hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et*  
14 *seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Restitution, Order  
15 for Administrative Penalties, and Consent to Same ("Order"). Respondent admits the jurisdiction  
16 of the Arizona Corporation Commission ("Commission"); neither admits nor denies the Findings of  
17 Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the  
18 Commission.

19 **I.**

20 **FINDINGS OF FACT**

21 1. Respondent is a single man who resided in Arizona from time to time between  
22 November 2009 and 2012 (the "Relevant Period").

23 2. Franklin AAA Holdings, LLC ("FAH") is a Texas limited liability company whose  
24 principal place of business and mailing address was located in Scottsdale, Arizona during the Relevant  
25 Period. FAH was not registered during the Relevant Period as a foreign entity qualified to do business  
26 in Arizona.

1           3.       Respondent is listed as FAH's sole member in FAH's original, 2007 Certificate of  
2 Formation; he also signed the Certificate as FAH's organizer. In FAH's Texas 2008 and 2009  
3 Franchise Tax Reports, Respondent is listed as FAH's president and president & director, respectively.

4           4.       FAH was also licensed to transact business in the state of Georgia during the relevant  
5 timeframe. The foreign-entity application that FAH submitted to the Georgia Secretary of State lists  
6 Respondent as FAH's manager and provides a Scottsdale, Arizona address.

7           5.       FAH was in the business of purchasing and selling real estate, including the  
8 purchase of tax liens on homes in various states.

9           6.       FAH funded its business, in part, by selling percentage interests in real estate  
10 transactions. For example, an FAH document titled "Beechwood Deal" lists seven investors along  
11 with each investor's percentage interest in the deal, along with the "acquisition cost," an "amount  
12 paid" (a total of \$7,000), and an "amount owed." Another FAH document titled "Investor Totals"  
13 lists 17 investors (the seven included in the "Beechwood Deal" document, FAH, and nine others).

14          7.       At least four FAH investors (including two of the seven described in the preceding  
15 paragraph) received securities from FAH in the form of investment contracts that were equity  
16 interests in real estate transactions.

17          8.       On behalf of FAH, Respondent was involved in the sale of investment contracts to at  
18 least three FAH investors, including the two investors described in detail below.

19          9.       In November 2009, Clavien's assistant introduced an Arizona resident ("AR1") to  
20 Respondent for the purpose of discussing AR1's interest in investing in FAH's real estate  
21 transactions.

22          10.       AR1 met with Respondent and other FAH representatives in Arizona to discuss AR  
23 FAH real estate transactions whereby AR1 would invest money and receive a note payable from  
24 the profit of the transactions. In addition to this face-to-face meeting, AR1 corresponded with  
25 Respondent through text messages and on Facebook and AR1 received emails from Respondent  
26 and other FAH representatives.

1           11.     Based on AR1's discussions with Respondent and other FAH representatives and  
2 the emails from Respondent and other FAH representatives, AR1 invested with FAH on three  
3 separate occasions. On 12/3/09, AR1 wired \$10,000 to FAH's account in a Texas-based bank.  
4 AR1's money was to be used to fund real estate transactions. In exchange for this \$10,000  
5 payment, FAH gave AR1 a promissory note titled "Promissory Note and Investment Agreement"  
6 dated 12/3/2009, in the amount of \$10,000, payable on 12/2/2010. The document provides that it is  
7 governed by the laws of the State of Arizona.

8           12.     After not receiving payment from FAH on or before the 12/3/10 date, AR1 extended  
9 the due date of the note. AR1 did not receive payment on the extended date or at any other time.

10          13.     On 1/29/10, AR1 wired \$2,200 to FAH's Texas-bank account. This money was to be  
11 used for FAH's legal fees connected to purchasing real property. In exchange for her investment,  
12 AR1 received an investment contract in the form of a percentage interest in the profits that would  
13 be made in connection with FAH selling the real property. AR1 received a \$1,273.17 return on this  
14 investment.

15          14.     On 2/4/10, AR1 wired \$3,000 to FAH's account in a Texas-based bank. AR1's  
16 money was to be used to fund real estate transactions. AR1 made this payment according to the  
17 terms of a Memorandum of Understanding dated 2/4/10, pursuant to which AR1 was a purchaser of  
18 an investment contract in the form of a percentage interest in an investment property. FAH paid  
19 AR1 the sum of \$4,500 on that \$3,000 investment.

20          15.     In sum, AR1 invested \$15,200 with FAH and received returns on those investments  
21 totaling \$5,773.17.

22          16.     AR1 was not an accredited investor nor sophisticated in real estate transactions at  
23 the time of the investments and AR1 did not participate in the management of FAH or in FAH's  
24 selection of the investment properties.

25          17.     A second Arizona resident ("AR2") became interested in investing in FAH after  
26 discussing the investment with Respondent. AR2 met with Respondent and two other FAH

1 representatives in FAH's Scottsdale offices where AR2 was given a presentation on FAH's various  
2 real estate deals that he could invest in.

3 18. In August 2010, AR2 invested \$50,000 with FAH. In return for this investment,  
4 FAH issued a note to AR2 in the amount of \$50,000, bearing 12% interest per annum. The note  
5 was dated 8/12/2010 with a due date of 8/12/13. The note states that it is governed by the laws of  
6 Arizona.

7 19. A few months later, AR2 invested an additional \$25,000 with FAH. In return for this  
8 investment, FAH issued a note to AR2 in the amount of \$25,000, bearing 12% interest per annum.  
9 The note was dated 10/27/2010 with a due date of 10/27/13. The note states that it is governed by  
10 the laws of Arizona.

11 20. FAH made monthly payments to AR2 for six months according to the terms of his  
12 notes (i.e. 12% per annum on the principal sum of \$75,000). FAH's monthly payments to AR2  
13 totaled \$4,500. FAH made an additional \$20,000 payment to AR2 in late 2014. Thus AR2 received  
14 returns totaling \$24,500 on his \$75,000 investment.

15 21. Together, AR1 and AR2 invested \$90,200 in FAH and received returns on those  
16 investments totaling \$30,273.17, leaving an outstanding amount owed of \$59,926.83.

## 17 II.

### 18 CONCLUSIONS OF LAW

19 1. The Commission has jurisdiction over this matter pursuant to Article XV of the  
20 Arizona Constitution and the Securities Act.

21 2. Respondent offered or sold securities within or from Arizona, within the meaning of  
22 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

23 3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were  
24 neither registered nor exempt from registration.

25 4. Respondent violated A.R.S. § 44-1842 by offering or selling securities while neither  
26 registered as a dealer or salesman nor exempt from registration.

5. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

6. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

7. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

### III.

## ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondent's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED that Respondent complies with the attached Consent to Entry of Order.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent shall pay restitution to the Commission in the principal amount of \$59,926.83 as a result of the conduct set forth in the Findings of Fact and Conclusions of Law. Restitution shall be due no later than 90 days after the date of this Order. Any principal amount outstanding shall accrue interest at the rate of 4.5 percent per annum beginning 90 days after the date of this Order until paid in full. Respondent and FAH are jointly and severally liable for the payment of this restitution, and any restitution recovered by the Commission from FAH shall be credited against the restitution owed by Respondent. Payment (whether by Respondent or FAH) shall be made to the "State of Arizona" to be placed in an interest-bearing account controlled by the Commission.

1       The Commission shall disburse any funds paid by Respondent and/or FAH on a pro-rata  
2 basis to investors shown on the records of the Commission. Any restitution funds that the  
3 Commission cannot disburse because an investor refuses to accept such payment, or any restitution  
4 funds that cannot be disbursed to an investor because the investor is deceased and the Commission  
5 cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at  
6 the time of the distribution, shall be disbursed on a pro-rata basis to the remaining investors shown  
7 on the records of the Commission. Any funds that the Commission determines it is unable to or  
8 cannot feasibly disburse shall be transferred to the general fund of the state of Arizona.

9       IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent shall pay an  
10 administrative penalty in the amount of \$2,500 as a result of the conduct set forth in the Findings of  
11 Fact and Conclusions of Law. The administrative penalty shall be due no later than 90 days after  
12 the date of this Order. Any amount outstanding shall accrue interest at the rate of 4.5 percent per  
13 annum beginning 90 days after from the date of this Order until paid in full. Respondent and FAH  
14 are jointly and severally liable for the payment of this penalty, thus any penalty payments recovered  
15 by the Commission from FAH shall be credited against the administrative penalty owed by  
16 Respondent. Payment (whether by Respondent or by FAH) shall be made to the "State of Arizona."

17       IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be  
18 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments  
19 shall be applied to the penalty obligation.

20       For purposes of this Order, a bankruptcy filing by Respondent shall be an act of default. If  
21 Respondent does not comply with this Order, any outstanding balance may be deemed in default  
22 and shall be immediately due and payable.

23       IT IS FURTHER ORDERED, that if Respondent fails to comply with this order, the  
24 Commission may bring further legal proceedings against Respondent, including application to the  
25 superior court for an order of contempt.

1 IT IS FURTHER ORDERED, that no finding of fact or conclusion of law contained in this  
2 Order shall be deemed binding against any Respondent under this Docket Number who has not  
3 consented to the entry of this Order.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
6  
7

8 CHAIRMAN LITTLE

COMMISSIONER STUMP

9  
10 COMMISSIONER FORESE

COMMISSIONER TOBIN

COMMISSIONER BURNS

11  
12 IN WITNESS WHEREOF, I, JODI A. JERICH, Executive  
13 Director of the Arizona Corporation Commission, have  
14 hereunto set my hand and caused the official seal of the  
15 Commission to be affixed at the Capitol, in the City of  
16 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

17 JODI A. JERICH  
18 EXECUTIVE DIRECTOR

19  
20 DISSENT

21  
22 DISSENT

23 This document is available in alternative formats by contacting Shaylin A. Bernal, ADA  
24 Coordinator, voice phone number 602-542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).

25 (RJM)  
26



**CONSENT TO ENTRY OF ORDER**

1  
2       1.     Respondent Anthony Clavien, an individual, admits the jurisdiction of the  
3 Commission over the subject matter of this proceeding. Respondent acknowledges that Respondent  
4 has been fully advised of Respondent's right to a hearing to present evidence and call witnesses and  
5 Respondent knowingly and voluntarily waives any and all rights to a hearing before the  
6 Commission and all other rights otherwise available under Article 11 of the Securities Act and Title  
7 14 of the Arizona Administrative Code. Respondent acknowledges that this Order constitutes a  
8 valid final order of the Commission.

9       2.     Respondent knowingly and voluntarily waives any right under Article 12 of the  
10 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief  
11 resulting from the entry of this Order.

12       3.     Respondent acknowledges and agrees that this Order is entered into freely and  
13 voluntarily and that no promise was made or coercion used to induce such entry.

14       4.     Respondent acknowledges that he has been represented by an attorney in this matter,  
15 that he has reviewed this Order with his attorney, John Kelly of Coppersmith Brockelman PLC, and  
16 that he understands all terms it contains.

17       5.     Respondent neither admits nor denies the Findings of Fact and Conclusions of Law  
18 contained in this Order. Respondent agrees that he shall not contest the validity of the Findings of  
19 Fact and Conclusions of Law contained in this Order in any present or future proceeding in which  
20 the Commission is a party.

21       6.     Respondent further agrees that he shall not deny or contest the Findings of Fact and  
22 Conclusions of Law contained in this Order in any present or future: (a) bankruptcy proceeding, or  
23 (b) non-criminal proceeding in which the Commission is a party (collectively, "proceeding(s)").  
24 Respondent further agree that in any such bankruptcy or non-criminal proceedings, the Findings of  
25 Fact and Conclusions of Law contained in this Order may be taken as true and correct and that this  
26 Order shall collaterally estop them from re-litigating with the Commission or any other state

1 agency, in any forum, the accuracy of the Findings of Fact and Conclusions of Law contained in  
2 this Order. In the event Respondent pursues bankruptcy protection in the future, he further agrees  
3 that in such bankruptcy proceeding, pursuant to 11 U.S.C. § 523(a)(19), the following  
4 circumstances exist:

5 A. The obligations incurred as a result of this Order are a result of the conduct set forth  
6 in the Findings of Fact and Conclusions of Law in the Order and are for the violation of Arizona  
7 state securities laws, pursuant to 11 U.S.C. § 523(a)(19)(A)(i);

8 B. This Order constitutes a judgment, order, consent order, or decree entered in a state  
9 proceeding pursuant to 11 U.S.C. § 523(a)(19)(B)(i), a settlement agreement entered into by  
10 Respondent pursuant to 11 U.S.C. § 523(a)(19)(B)(ii), and a court order for damages, fine, penalty,  
11 citation, restitution payment, disgorgement payment, attorney fee, cost or other payment owed by  
12 Respondent pursuant to 11 U.S.C. § 523(a)(19)(B)(iii).

13 7. By consenting to the entry of this Order, Respondent agrees not to take any action or  
14 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
15 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
16 basis.

17 8. While this Order settles this administrative matter between Respondent and the  
18 Commission, Respondent understands that this Order does not preclude the Commission from  
19 instituting other administrative or civil proceedings based on violations that are not addressed by  
20 this Order.

21 9. Respondent understands that this Order does not preclude the Commission from  
22 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
23 that may be related to the matters addressed by this Order.

24 10. Respondent understands that this Order does not preclude any other agency or  
25 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal  
26 proceedings that may be related to matters addressed by this Order.

1           11.     Respondent agrees that he will not apply to the state of Arizona for registration as a  
2 securities dealer or salesman or for licensure as an investment adviser or investment adviser  
3 representative until such time as all restitution and penalties under this Order are paid in full.

4           12.     Respondent agrees that he will not exercise any control over any entity that offers or  
5 sells securities within or from the state of Arizona or provides investment advisory services within  
6 or from the state of Arizona until such time as all restitution and penalties under this Order are paid  
7 in full.

8           13.     Respondent agrees that he will continue to cooperate with the Securities Division  
9 including, but not limited to, providing complete and accurate testimony at any hearing in this  
10 matter and cooperating with the state of Arizona in any related investigation or any other matters  
11 arising from the activities described in this Order.

12           14.     Respondent consents to the entry of this Order and agrees to be fully bound by its  
13 terms and conditions.

14           15.     Respondent acknowledges and understands that if he fails to comply with the  
15 provisions of the order and this consent, the Commission may bring further legal proceedings  
16 against him, including application to the superior court for an order of contempt.

17           16.     Respondent understands that default shall render him liable to the Commission for  
18 its costs of collection, including reasonable attorneys' fees and interest at the maximum legal rate.

19           17.     Respondent agrees and understands that if he fails to make any payment as required  
20 in the Order, any outstanding balance shall be in default and shall be immediately due and payable  
21 without notice or demand. Respondent agrees and understands that acceptance of any partial or late  
22 payment by the Commission is not a waiver of default by the Commission.

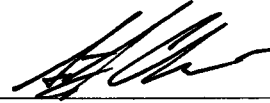
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**Respondent Signature Page**



Respondent Anthony Clavien

State of ENGLAND , UK  
County LONDON ) ss

SUBSCRIBED AND SWORN TO BEFORE me this 20 day of October, 2016.

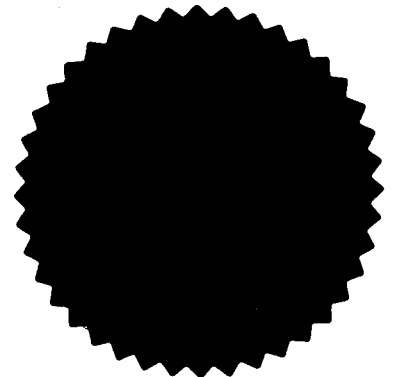


NOTARY PUBLIC

My commission expires:

WITH LIFE

Nathalie Lee-Kong  
**NOTARY PUBLIC**  
36 Vera Road, Fulham  
London SW6 6QW, ENGLAND  
Email: Info@nlknotary.co.uk  
Mobile: 07557 019 878



1 SERVICE LIST FOR Franklin AAA Holdings, LLC et al.

2

3 John C. Kelly  
4 COPPERSMITH BROCKELMAN PLC  
5 2800 North Central Avenue, Suite 1200  
6 Phoenix, AZ 85004

7 Attorney for Anthony Clavien

8

9 Franklin AAA Holdings, LLC  
10 c/o Antiquities Holdings, LLC  
11 Attn: Dana Pierson  
12 7740 N. 16<sup>th</sup> Street, Ste. 150  
13 Phoenix, AZ 85020

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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE – Chairman  
4 BOB STUMP  
5 BOB BURNS  
6 TOM FORESE  
7 ANDY TOBIN

8 In the matter of:

9 Franklin AAA Holdings, LLC, a Texas limited  
10 liability company, and

11 Anthony Clavien, a single man,

12 Respondents.

DOCKET NO. S-20930A-15-0211

**NOTICE OF FILING OF PROPOSED  
OPEN MEETING AGENDA ITEM**

13 On this 3rd day of November, 2016, the foregoing document was filed with Docket  
14 Control as a Securities Division Memorandum & Proposed Order, and copies of the foregoing were  
15 mailed on behalf of the Securities Division to the following who have not consented to email service.

16 On this date or as soon as possible thereafter, the Commission's eDocket program will automatically  
17 email a link to the foregoing to the following who have consented to email service.

18 John C. Kelly  
19 Coppersmith Brockelman PLC  
20 2800 North Central Avenue, Suite 1200  
21 Phoenix, AZ 85004

jkelly@cblawyers.com

Attorney for Respondent Clavien

**Consented to Service by Email**

22 COPY of the foregoing mailed this 3rd day of November, 2016, to:

23 Franklin AAA Holdings, LLC  
24 c/o Antiquities Holdings, Dana Pierson – Manager  
25 7740 N. 16<sup>th</sup> St. Ste. 150  
26 Phoenix, AZ 85020

By: *June L. Lindsey*

Decision No. \_\_\_\_\_